IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 929

MARVIN J. MORSE,
Appellant,

vs.

D. A. HINDMAN and CHARLEY A. LYND,
Appellees.

ON APPEAL FROM THE KANSAS SUPREME COURT

MOTION TO DISMISS

D. A. Hindman and Charley A. Lynd, Appellees, file this Motion to Dismiss pursuant to Rule 16-1(a) and (b) of the Supreme Court Rules. In support of this Motion, these Appellees state the following facts and arguments.

This is an appeal from the final judgment of the Supreme Court of Kansas in the case of *Hindman, et al.* v. *Shepard, et al.*, cited at 205 Kan. 207 (1970). There is also existing a companion case which was brought in the United States District Court for the District of Kansas

entitled *Shepard, et al.* v. *Hindman, et al.*, Case No. T-3987. These two cases have been the subject of three previous Petitions for Writ of Certiorari filed by the Appellant, Marvin J. Morse. On February 10, 1969, and on February 24, 1969, Morse filed two Petitions for Writ of Certiorari in this Court (No. 1031 and No. 1081, October Term, 1968). Both of these Petitions were denied on April 1, 1969, and Leave to File Petitions for Rehearing was denied on May 17, 1969. On December 29, 1969, the Appellant filed another Petition for Writ of Certiorari (No. 1007, October Term, 1969). This Petition was denied on February 24, 1970.

It would be of questionable benefit and unnecessarily lengthen this Motion to set forth all the facts involved in this appeal. The facts relevant to the merits of the controversy are set forth in the judgment by the Supreme Court of Kansas and in the briefs (in opposition to the previous three Petitions for Writ of Certiorari) filed by these Appellees and other respondents. However, certain facts pertaining to this Motion warrant mentioning.

Originally, this case was commenced by the Appellees in the District Court of Rooks County, Kansas, as a quiet title action. Certain of the defendants, which did not include the Appellant, Marvin J. Morse, requested that the action be tried to a jury. Based on its interpretation of Kansas law, the trial court held that the case was not properly triable to a jury. A trial was held by the court and judgment was entered in favor of the Appellees. Morse and other defendants in the case appealed to the Supreme Court of Kansas which affirmed, on April 11, 1970, the judgment of the trial court. Morse filed a Motion for Rehearing by the Supreme Court of Kansas which was denied June 4, 1970. Morse then filed a Notice of Appeal to the Supreme Court of the United States, a copy of

which is attached to this Motion and marked Exhibit "A". The Notice stated that the appeal was from the Kansas Supreme Court's denial of the Petition for Rehearing. On August 24, 1970, an Order was entered by this Court by Associate Justice Byron R. White extending the time for docketing the appeal to November 1, 1970. However, the appeal was not docketed until November 2, 1970.

It is Appellees' contention that the above facts clearly indicate that the appeal does not involve a substantial federal question and that the appeal was not taken in conformity with the statutes or rules. The reasons for Appellees' contention are stated below:

1. The Notice of Appeal designates the Supreme Court of Kansas' Denial of the Petition for Rehearing entered on June 4, 1970, as the only judgment from which the appeal is taken. This final judgment affecting the matters in controversy was the opinion by the Supreme Court of Kansas on April 11, 1970. A notice of appeal has not been filed as to this judgment. The judgment concerning the Denial of Petition for Rehearing is not a judgment involving substantial federal questions.

2. The time to docket this appeal was extended by Associate Justice Byron R. White by an Order dated August 24, 1970, to and including November 1, 1970. However, the Appellant did not docket the appeal until November 2, 1970, as shown by Exhibit "B" attached hereto. Therefore, the appeal was not docketed within the time required under Rule 13 of the Supreme Court Rules.

3. The question of a right to a jury trial under the circumstances in this case does not involve a substantial federal question but a question of Kansas law. It should further be noted that the demand for a jury trial in this case was made by parties other than the Appellant who

are not appealing, and that the Appellant did not make a demand for a jury trial.

4. The remaining question raised in this appeal is whether the United States District Court for the District of Kansas had exclusive jurisdiction over the matters involved between the parties which would preclude any exercise of jurisdiction by State Courts of Kansas. The State Courts and Federal District Courts have repeatedly held in these two cases that their jurisdiction was concurrent. This question was the subject of Appellant's previously mentioned Petitions for Writ of Certiorari, which were all denied by this Court. It is submitted that this question, which has been denied review on three other occasions, is not a substantial federal question.

For the reasons stated above, it is respectfully requested that this court enter an order dismissing this appeal.

Respectfully submitted,

ROBERT MARTIN
1111 Vickers Tower
Wichita, Kansas 67202
Attorney for Appellees,
D. A. Hindman and
Charley A. Lynd

EXHIBIT "A"

No. 45622

IN THE SUPREME COURT OF THE STATE OF KANSAS

D. A. HINDMAN and CHARLES A. LYND,
Appellees,

vs.

MARY CATHERINE SHEPARD, et al.,
Appellants

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that appellant Marvin J. Morse hereby appeals to the Supreme Court of the United States from the judgment and the final order of this court, denying the petition for rehearing, entered in this action on June 4, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

By /s/ Marvin J. Morse
Marvin J. Morse
Pro-se appellant
980 Barkley Court
Pinole California

PROOF OF SERVICE

Appellant Marvin J. Morse certifies that on the 13th day of July, 1970, he deposited in the United States mail, postage prepaid, a copy of the attached notice of appeal addressed to each of the following parties:

Frank Sabatini and Joel Sterrett, 1108 First National Bank Building, Topeka, Kansas

Tom C. Triplett, 1111 Vickers Tower, Wichita, Kansas

Harold A. Morse, 3298 S. Elm Street, Denver, Colorado

Donald E. Morse, Rt. #2, Parma, Idaho

Ralph L. Morse, 980 Barkley Court, Pinole, California

Esther R. Hanzen, P. O. Box 332, Pendleton, Oregon

Shirley Y. Henderson, P. O. Box 332, Pendleton, Oregon

Catherine Ransom, Payette, Idaho

Frances Gfeller, Sharon Springs, Kansas

Laura Merritt, 5275 W. 1st Avenue., Apt. 116, Denver, Colorado

Elida Merritt, 970 North 11th Street, Laramie, Wyoming

Anna Alley, Sharon Springs, Kansas

Barbara Hillman, 623 N. 7th Street, Wakeeney, Kansas

Margaret Christensen, Monticello, Utah

/s/ Marvin J. Morse
Marvin J. Morse

EXHIBIT "B"

SUPREME COURT OF THE UNITED STATES

October Term, 1970

MARVIN J. MORSE et al.,
Appellant
vs.
D. A. HINDMAN AND CHARLEY A. LYND
Appellee
No. 929

To Mr. Thomas C. Triplett, Counsel for Appellee D. A. Hindman and Charley A. Lynd.

You Are Hereby Notified that an appeal in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 2nd day of Nov., 1970.

/s/ Marvin J. Morse
Appellant Pro-se
980 Barkley Ct.
Number and Street
Pinole, Calif. 94564
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need *not* be filed in the Supreme Court.